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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93M-82

DISPATCHED BY
In re Applications of)
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)
BARBARA BRINDISI)
)
LAURYN BROADCASTING CORPORATION)
)
For Construction Permit for a New)
FM Station on Channel 265A)
in Beaumont, California)
)
and)
)
KAY SADLIER-GILL)
)
For Modification of Facilities For)
Station KATY-FM, Idyllwild, California)

MM DOCKET NO. 92-310✓ 30958
File No. BPH-910703MI
File No. BPH-910703MJ
File No. BPH-910611IF

MEMORANDUM OPINION AND ORDER

Issued: February 25, 1993 ; Released: February 26, 1993

1. Lauryn Broadcasting Corporation (Lauryn) seeks a ruling on a "Petition for Leave to Amend and Amendment." She filed her petition on February 10, 1993, and wants (at this late date) to change the source of her financing. Barbara Brindisi (Brindisi) filed an Opposition to Lauryn's petition on February 22, 1993.

Background

2. Lauryn filed her application on July 3, 1991 (BPH-910703 MJ). There she represented that the source of her financing was ostensibly a loan commitment letter from the World Trade Bank of Beverly Hills, California. That letter was dated July 1, 1991,¹ and was signed by a Peter F. Lambert, Senior Vice President, Entertainment Industries Division.

3. Between the July 3, 1991 filing date and January 21, 1993, Hearing Designation Order (DA 92-1733), Lauryn filed nothing that would alert the Commission that she no longer wanted to rely on the World Trade Bank letter. In fact there is no tangible evidence now that the World Trade Bank has

¹ Actually Lauryn Cox, Lauryn's sole principal certified that the statements in her application were true and correct on June 29, 1991, two days before the date of the World Trade Bank letter. So, without going into an in-depth analysis, the observation (based on the dates) is warranted that Lauryn Cox was in the throes of obtaining last-minute financial support; i.e., a reasonable assurance letter.

withdrawn the financial commitment (if any there be) contained in the July 1, 1991 letter.

4. However, Lauryn has attached to its February 10, 1993 petition another purported loan commitment letter. This one is dated August 1, 1991, and is signed by Lloyd Taylor of Superior Financial Mortgage Lending Services. Superior Financial Mortgage Lending Service, by Lauryn's own admission, is not your ordinary banking institution. That is, it's not a commercial bank.²

5. Lauryn's February 10, 1993 petition and the accompanying papers must be analyzed against this factual background.

Ruling

6. Lauryn's petition will be denied. It's way too late in the game to be changing financial plans. She has failed to meet at least three of Edwin O'Conner's six "good cause" standards. See Erwin O'Conner Broadcasting Co., 22 FCC 2d 140, 143, 18 RR 2d 820 (Rev. Bd. 1970).

7. First, Lauryn hasn't exercised due diligence. She filed her Beaumont application on July 3, 1991. There she certified she was financially qualified. And in support, she asked the Commission to rely on a loan commitment letter from the World Trade Bank dated July 1, 1991. That letter purportedly was to reasonably assure the Commission that Lauryn was financially qualified and that her application could be processed on that basis.

8. Between the filing date (July 3, 1991), and the designation for hearing date (January 21, 1993), Lauryn filed nothing else. Stated another way, for almost eighteen months the Commission relied on her representation, processed her application, and ultimately placed her application in hearing along with three mutually-exclusive opponents.

9. Now she alleges that "...[a] few weeks after my Beaumont application was filed with the FCC. . ." she learned that the World Trade Bank might withdraw their financial commitment letter. So she went to the Superior Financial Mortgage Service and secured what she now represents is another "reasonable assurance" letter. That letter, dated August 1, 1991, was never submitted to the Commission until Lauryn filed her February 10, 1993 amendment request.

10. That is not due diligence. In fact, it is the antithesis of due diligence. If she knew before August 1, 1991 that she needed to amend the financial portion of her application, then she was remiss in the extreme to wait 18 months to do so.

11. Lauryn tries to circumvent a lack of due diligence ruling by placing the blame for her tardiness (if that's what it is) on her former counsel, Gary Smithwick. In fact, she levels serious accusations against Smithwick. She asserts that Smithwick didn't keep her informed about what he was doing, that he didn't always accept her phone calls, that he didn't answer all her questions, and that he didn't keep her fully briefed at all times. She openly accuses Smithwick of ". . . negligence and inefficiency. . ." She concludes by saying:

" . . . I'm very disappointed and hurt because of what Mr. Smithwick has done to me. As a Black female applicant trying to get into broadcast ownership, I feel like a victim. . . "

12. The Trial Judge is deeply concerned about this attack. Lauryn offers absolutely no support or corroboration for such blatancies. Mr. Smithwick has appeared before the Judge on several other occasions. He has always conducted himself in a manner befitting an officer of the court. He has been honest and straight forward.³ Therefore he would expect Lauryn to offer sufficient and specific details to support such accusations. Since she hasn't offered even a scintilla of support, her attack is rejected.^{4 5}

13. Lauryn also fails O'Conner's voluntary test. She hasn't shown that the proposed amendment is the result of an involuntary act or acts. In fact the converse appears to be the case. There is no evidence that the World Trade Bank has ever withdrawn the financial commitment contained in the July 1, 1991 letter. So to now offer the August 1, 1991 financial commitment from the Superior Financial Mortgage Lending Service is both voluntary and superfluous. This forms a second and independent reason for denying Lauryn's February 10th amendment request.

14. Third, Lauryn has failed to demonstrate that accepting the amendment would not give rise to the need for new issues in the proceeding. Again the converse is true. Lauryn wants to replace a loan commitment letter from a recognized commercial bank with one from an organization other than an ordinary banking institution. Thus a financial issue would be needed to test the viability of the Superior Financial Mortgage Lending Service and its

³ This doesn't mean that the Trial Judge has always agreed with Mr. Smithwick's legal positions. But Smithwick has been anything but ". . . negligent and inefficient. . . "

⁴ In the long run an attorney has precious little to offer a prospective client other than his reputation. So character attacks such as Lauryn's must be of deep concern.

⁵ Mr. Smithwick refused to give Lauryn a statement about the events involved here because as she puts it ". . . his memory of the events is not totally consistent with my memory." Need more be said?

ability and authority to lend Lauryn \$400,000.⁶ This forms a third and independent reason for denying Lauryn's amendment request.

SO Lauryn Broadcasting Corporation's "Petition for Leave to Amend and Amendment" filed on February 10, 1993, IS DENIED; and the accompanying amendment IS REJECTED.

FEDERAL COMMUNICATIONS COMMISSION



Walter C. Miller
Administrative Law Judge

⁶ Frankly after reading Lauryn Cox's February 9, 1993 statement supporting her Petition for Leave to Amend, the Trial Judge has his doubts about the viability of Lauryn's original loan letter; i.e., the July 1, 1991 World Trade Bank letter.